

Part 2

Rights-Of-Way Across State Lands

72-5-201 Purpose statement.

- (1)
 - (a) The Legislature recognizes that highways provide tangible benefits to private and public lands of the state by providing access, allowing development, and facilitating production of income.
 - (b) Many of those highways traverse state lands, including lands held by the state in trust for the school children and public institutions of the state.
 - (c) Many of the existing highways have been previously established without an official grant of an easement or right of entry from this state, yet these highways often are the only access to private and public lands of the state.
- (2) The Legislature intends to establish a means for ensuring continued access to the private and public lands of the state for the good of the people, while fulfilling its fiduciary responsibilities toward the schoolchildren by protecting their trust holdings against loss.

Renumbered and Amended by Chapter 270, 1998 General Session

72-5-202 Definitions.

As used in this part:

- (1) "Responsible authority" means a private party, the state of Utah, or a political subdivision of the state claiming rights to a highway right-of-way, easement, or right of entry across state lands.
- (2) "Sovereign lands" has the same meaning as provided in Section 65A-1-1.
- (3) "State lands" means sovereign and trust lands, as well as all other lands held by or on behalf of the departments, divisions, or institutions of the state.
- (4) "Trust lands" has the same meaning as "school and institutional trust lands" as defined in Section 53C-1-103.

Renumbered and Amended by Chapter 270, 1998 General Session

72-5-203 Public easement or right of entry -- Grant -- Application -- Conditions.

- (1)
 - (a)
 - (i) Subject to Section 53C-1-302 and Subsection 53C-1-204(1), a temporary public easement or right of entry is granted for each highway existing prior to January 1, 1992, that terminates at or within or traverses any state lands and that has been constructed and maintained or used by a responsible authority.
 - (ii) The temporary public easement or right of entry granted under Subsection (1)(a)(i) is 100 feet wide for each class A and B highway.
 - (b) Each easement shall remain in effect through June 30, 2004, or until a permanent easement or right of entry has been established under Subsection (2), whichever is greater.
- (2)
 - (a) The School and Institutional Trust Lands Administration and the Division of Forestry, Fire, and State Lands shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing an application process for a responsible authority to obtain a permanent easement or right of entry over any temporary public easement granted under Subsection (1), subject to the provisions of Subsections (2)(b), (c), and (d).

- (b) A grant of a permanent easement or right of entry across sovereign lands shall be made upon a showing to the Division of Forestry, Fire, and State Lands that continued use of the easement will provide a public benefit commensurate with the value of the permanent easement or right of entry.
 - (c) A grant of a permanent easement or right of entry across trust lands shall be made upon a showing to the School and Institutional Trust Lands Administration that the grant is consistent with the state's fiduciary responsibilities under Section 53C-1-302 and Subsection 53C-1-204(1).
 - (d) A grant of a permanent easement or right of entry across state lands other than sovereign and trust lands shall be made upon a showing to the managing unit of state government that the continued use will provide a public benefit commensurate with the value of the easement and will not unreasonably interfere with the purposes for which the land was obtained or is now held.
- (3) The grant of the temporary public easement or right of entry under Subsection (1) is consistent with the trust responsibilities of the state and in the best interest of the state.
- (4) A responsible authority that has been granted a permanent easement or right of entry over state lands may maintain the permanent easement or right of entry for the uses to which the permanent easement or right of entry was put prior to and including January 1, 1992, subject to the right of the managing unit of state government or private party to relocate the permanent easement or right of entry.
- (5) The grant of a permanent easement or right of entry under this section is effective on the date the highway was originally constructed or established for public use.

Amended by Chapter 344, 2009 General Session